CONNECTICUT
TRIAL LAWYERS
ASSOCIATION

CTLA . 100 Wells Street, Suite 2H. Hartford, CT 06103
Phone: (860) 522-4345 . Fax: (860) 522-1027
www.cttriallawyers.org

HB 5537
Public Hearing 3/24/2010

TO: **MEMBERS OF THE JUDICIARY COMMITTEE**
FROM: CONNECTICUT TRIAL LAWYERS ASSOCIATION
DATE: MARCH 24, 2010

RE: **SUPPORT FOR RAISED BILL NO. 5537**
AN ACT CONCERNING CERTIFICATES OF MERIT

The Connecticut Trial Lawyers Association respectfully urges the members of the Connecticut General Assembly to **PASS RAISED BILL NO. 5537.**

Raised Bill NO. 5537 seeks to revise provisions concerning certificates of merit, or opinion letters that Connecticut law requires in medical malpractice actions. Under current law, a certificate of merit, signed by a "similar health care provider" must be attached to all lawsuits alleging medical malpractice. This Raised Bill responds to a recent Connecticut Appellate Court decision which made clear that the current law, 52-190a, as amended by P.A. 05-275, led to unfair and irrational results.

In Bennett v New Milford Hospital, 117 Conn. App. 535 (2009), the Connecticut Appellate Court held that a medical malpractice action is subject to dismissal if the physician's opinion is not written by a "similar health care provider." Unfortunately, this decision revealed a significant problem with P.A. 05-275 regarding the definition of a "similar health care provider." In the Bennett decision, the Court found that Connecticut law imposes a higher standard on an expert used to provide a good faith basis for filing a lawsuit than required at trial. In other words, under current law, an expert may be unqualified to sign a certificate of merit, yet this same expert can testify at trial and provide a basis for a jury finding that a defendant acted negligently.

As proposed, this Raised Bill seeks to amend Connecticut General Statutes § 52-190a which governs the certificates of good faith required in negligence actions against health care providers and to amend corresponding sections of § 52-184c which governs the qualifications of standard of care expert witnesses. These changes address the Court's decision in Bennett and makes clear that there is only one standard to determine whether an expert witness is qualified to offer the opinion that a health care provider acted negligently. Additionally, Raised Bill 5537 addresses some technical issues that need clarification in order to avoid wasted judicial resources on needless Motions. For example, the Raised Bill makes clear that a health care provider can offer the opinion that a hospital, and/or other business entities violated accepted standards of care; current law allows these entities to argue that a good faith certificate is insufficient as to them

merely by making the absurd claim that the doctor is not a hospital. Finally, the Raised Bill clarifies that written opinions are not required in any action against a health care provider for assault, lack of informed consent or ordinary negligence unrelated to the rendering of care or treatment, which ordinarily do not require expert testimony at trial.

This Raised Bill is drafted to ensure that, while frivolous suits are stopped early in the process, meritorious cases will not be blocked solely by unnecessary and burdensome procedural requirements. Moreover, the bill seeks to save judicial resources by eliminating the current burdensome and time consuming process in which defendants file Motions to Dismiss in nearly all medical malpractice cases, no matter how meritorious; (over 115 such Motion have been filed in the last 4 years).

For this reason, CTLA urges members to **PASS** the Raised Bill.